

## CONNECTICUT TRIAL LAWYERS ASSOCIATION

### WORKERS' COMPENSATION SECTION

The Connecticut Trial Lawyers Association supports **S.B. No. 153**, "An Act Concerning Scarring Awards under the Workers' Compensation Act". We would, however, suggest that the bill be amended to give workers' compensation commissioners the authority to award benefits for work injuries that result in permanent significant scarring or disfigurement on any part of the body. A copy of our proposal is attached as Exhibit A.

Current law (C.G.S. Sec. 31-308(c)) limits compensation for scarring and disfigurement to "(A) the face, head or neck or (B) any other area of the body which handicaps the employee in obtaining or continuing to work". This section was added in 1993. Prior to that time, commissioners had the ability to award compensation for scarring on any part of the body that resulted from a work-related injury. At the recent informational hearing held by this committee, former Commissioner A. Paul Berte provided specific examples of how well that law worked in addressing situations where individual workers suffered serious burn injuries that resulted in horribly painful and debilitating scars.

We believe that the present statute is unfair and arbitrary. Subsection (A) of the statute limits scarring and disfigurement awards to those parts of the body that are visible. As noted by Professor Arthur Larson, the author of the leading treatise on workers' compensation, "modern cases generally do not insist that the disfigured area be one normally exposed to view." Larson's Workers' Compensation, Sec. 88.03. The underlying rationale for this view is provided by a New Jersey decision:

"This court can perceive no distinction between a normally visible, non-disabling disfigurement and one which is normally concealed, non-disabling, but of such a nature and extent that it would be revealed by the customary, pre-employment physical examination. Both types possess the inherent capacity to impair future earning capacity." Right v. Purepac Corp., 82 N.J. Super. 100, 196 A.2d 695, 700 (Law Div. 1063)

Subsection (B) of the current statute is likewise unduly restrictive. Other than modeling, in what other occupation would a permanent disfigurement reasonably prevent an injured worker from being gainfully employed? The lack of any reported decisions since 1993 in which a scarring award has been made under this subsection demonstrates its limited application.

What has happened in the last 14 years is that many workers who have suffered horribly painful and debilitating scars have been prevented from being properly compensated for their disfigurements. Some examples:

- Thomas Barton - an electrician who sustained severe burns to his hands, arms and torso in a propane fire in Wallingford, resulting in continual skin lesions and loss of skin function
- Sharon Mello - a supermarket employee who suffered burns to her right foot and ankle
- Manuel Mourao - a laborer who was buried in 300-400° hot asphalt up to his thighs while doing paving work in Norwalk and sustained second, third and fourth degree burns to both legs
- Joseph Tatroe - an auto body man who suffered severe burns over approximately 65% of his body and underwent multiple skin grafts and surgeries in an explosion in Norwalk
- Joseph Atkinson - an electrician who sustained hypertrophic burr scars to his back, right shoulder, right arm, trunk and thigh in an electrical arcing/explosion at Sikorsky Aircraft

Like countless other employees who have been injured since 1993, these individuals did not receive compensation benefits for their permanent significant scarring because the affected areas were not expressly covered by the statute. While those workers suffered, workers' compensation insurance carriers have annually earned, since 1993, an average after-tax profit of 14.2% of premium in Connecticut. This is more than twice as large as the countrywide average of 6.8%.

**S.B. No. 153**, if amended in accordance with our proposal, would help to correct that inequity. It would allow trial commissioners to have the flexibility in appropriate cases, based upon established legal, medical and factual criteria, and subject to review by the Compensation Review Board, to award benefits for permanent significant scarring or disfigurement for all parts of the body.

The increase in overall workers' compensation costs of implementing this change, according to our actuarial analysis, based upon available data, would range from 0.7% to 2.0%. In light of the enormous profits earned by workers' compensation insurance carriers in Connecticut for the last 14 years, at the expense of injured workers, this cost seems a relatively small price to pay to partially restore fairness and balance to our workers' compensation system.

We urge the members of the Labor and Public Employees Committee to support **S.B. No. 153**, with the amended language set forth in Exhibit A.

Respectfully Submitted,

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Robert R. Sheldon  
Chairman

## **AN ACT CONCERNING SCARRING AND DISFIGUREMENT AWARDS UNDER THE WORKERS' COMPENSATION ACT**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (c) of section 31-308 of the general statutes is repealed and the following is substituted in lieu thereof:

(c) In addition to compensation for total or partial incapacity or for a specific loss of a member or use of the function of a member of the body, the commissioner, not earlier than one year from the date of the injury [and not later than two years from the date of the injury] or the surgery date of the injury, may award compensation equal to seventy-five percent of the average weekly earnings of the injured employee, calculated pursuant to section 31-310, as amended, after such earnings have been reduced by any deduction for federal or state taxes, or both, and for the federal Insurance Contributions Act made from such employee's total wages received during the period of calculation of the employee's average weekly wage pursuant to [said] section 31-310, as amended, but not more than one hundred per cent, raised to the next even dollar, of the average weekly earnings of production and related workers in manufacturing in the state, as determined in accordance with the provisions of section 31-309, for up to two hundred eight weeks, for any permanent significant disfigurement of, or permanent scar on, [(A) the face, head or neck, or (B) on any other of the body which handicaps the employee in obtaining or continuing to work. The commissioner may not award compensation under this subsection when the disfigurement was caused solely by the loss of or loss of use of a member of the body for which compensation is provided under subsection (b) of this section or for any scar resulting from an inguinal hernia operation or any spinal surgery] any area of the body. In making any award under this subsection, the commissioner shall consider (1) the location of the scar or disfigurement, (2) the size of the scar or disfigurement, (3) the visibility of the scar or disfigurement due to hyperpigmentation or depigmentation, whether hypertrophic or keloidal, (4) whether the scar or disfigurement causes a tonal or textural skin change, causes loss of symmetry of the affected area or results in noticeable bumps or depressions in the affected area, and (5) other relevant factors.

### **EXHIBIT A**

[Notwithstanding the provisions of this subsection, no compensation shall be awarded for any scar or disfigurement which is not located on (A) the face, head or neck, or (B) any other area of the body which handicaps the employee in obtaining or continuing to work.] In addition to the requirements contained in section 31-297, the commissioner shall provide written notice to the employer or the employer's representative prior to any hearing held by the commissioner to consider an award for any scar or disfigurement under this subsection.